

CHAPTER 3
**COMPLIANCE AND
ENFORCEMENT
ACTIVITIES**

— Structure of this Chapter

This Chapter is structured in a manner whereby, in the following three Parts, the Office's inputs, throughputs and outputs respectively are detailed.

— PART A: INPUTS

EXTERNAL INPUTS

The Office's activities in confronting unlawful and irresponsible behaviour are driven to a substantial extent, both directly and indirectly, by inputs received from external sources. This is a function of the fact that:

- a number of parties, including liquidators, auditors, examiners and certain professional bodies, have statutory reporting obligations to the Office;
- the Office forms part of a broader statutory framework that provides for the referral of, otherwise confidential, information between regulatory and enforcement bodies where such information is considered to be relevant to those other entities' functions; and
- the Office receives a substantial number of complaints from members of the public annually.

In that context, the principal inputs received from external sources during the year were as follows:

Table 5

Inputs from external sources

	2019	%	2018	%
Statutory reports				
Liquidators' reports (initial) (s682)	558		606	
Liquidators' reports (subsequent) (s682)	314		260	
Total liquidators' reports (s682)	872	67	866	67
Liquidators' reports regarding possible criminality (s723)	1	1	1	1
Auditors' indictable offence reports (s393)	105	8	73	6
Examiners' reports (s534)	27	2	41	3
Professional Bodies' indictable offence reports (s931)	0	0	0	0
Professional Bodies non-indictable offence reports	0	0	0	0
Referrals				
Referrals from external parties	12	1	19	1
Complaints				
Complaints from members of the public	254	19	247	18

Table 5 (continued)	2019	%	2018	%
Other				
Disclosures under the Protected Disclosures Act 2014 ¹⁶	8	1	5	1
Applications seeking change to accounting year end ¹⁷	20	1	40	3
Total inputs from external sources	1,299	100%	1,292	100%

The principal external sources of inputs driving the Office's activities over the year under review are elaborated upon below.

Liquidators' section 682 reports

Introduction – overview of the liquidator reporting regime

In summary, liquidators of companies that are in insolvent¹⁸ liquidation are required by law¹⁹ to report to the Office on the circumstances giving rise to the company's failure and on the conduct of any person who was a director of the company during the twelve months preceding the entry of the company into liquidation. The liquidator must also proceed to apply to the High Court for the restriction²⁰ of each of the directors, unless relieved of that obligation by the Office²¹.

The essential aims of this statutory reporting regime are to:

- afford the public a degree of protection by ensuring that persons who have been determined by the High Court as not having acted honestly and/or responsibly in the period prior to a company's entering insolvent liquidation may, in respect of the mandatory five year period of restriction, only act as directors of other companies that meet minimum capitalisation requirements; and
- ensure that persons who, in the period prior to a company's entering insolvent liquidation, have been judged to have acted honestly and responsibly can continue to engage in entrepreneurial activity through the medium of limited liability companies without sanction or penalty.

In discharging its role in this regard, this Office expects liquidators to provide it with all of the information which is relevant to the making of an appropriate decision. The Office continuously seeks to ensure that liquidators make evidence-based recommendations regarding relief/no relief by reference to the results of their investigations.

The Office considers granting relief where a liquidator advances an evidence-based justification in support of a claim that a director has acted honestly and responsibly in conducting the company's affairs. In making its decisions, the Office is keen to ensure that no director needlessly bears the burden of a High Court hearing where he or she has clearly demonstrated honest and responsible behaviour in the conduct of the

¹⁶ The information that requires to be published by the Office pursuant to section 22 of the Protected Disclosures Act 2014 is set out later in this Chapter under the heading of Outputs.

¹⁷ Section 288(10)(c)

¹⁸ A company is insolvent when it is unable to pay its debts as they fall due

¹⁹ Section 682 Companies Act 2014

²⁰ Where an individual is restricted under section 819 of the Companies Act 2014, s/he may only act as the director or secretary of a company for a period of five years thereafter provided that the company concerned meets certain minimum capitalisation requirements. In the case of a public limited company a minimum called up share capital of €500,000 is required. In the case of any other company, the corresponding figure is €100,000.

²¹ The process and scope of liquidator reporting are outlined in three main ODCE publications, Decision Notice D/2002/3 as supplemented by Decision Notice D/2003/1 and Information Notice I/2009/1. These documents are available at www.odce.ie

affairs of the failed enterprise. In practice, the Office acts as a filter to remove the need for consideration by the High Court of those cases which do not appear to warrant its attention.

It is important to note, however, that ODCE decisions of ‘no relief’ or ‘partial relief’ do not constitute a finding of dishonesty or irresponsibility in respect of the directors concerned, and it would be inappropriate for any such inference or imputation to be drawn. It is solely a matter for the High Court (having heard the submissions of the liquidator and director(s) respectively) to determine if a Restriction Declaration should be made in respect of any particular company director.

Restriction and Disqualification Undertakings

Since 2015, there has been in place a statutory framework under which individuals who might otherwise face the prospect of Court proceedings can avoid having to attend Court by voluntarily agreeing to a restriction or disqualification as applicable (i.e., by providing a legally binding Undertaking to that effect).

The Act provides the ODCE with discretion as to whether to offer an Undertaking. The offer of an Undertaking must be made on the prescribed form, the layout and content of which is stipulated by Statutory Instrument and is referred to as a “Notice”. The Notice must set out, *inter alia*, an outline of the circumstances, facts and allegations establishing the grounds for a restriction or disqualification together with details of the legal effects of an Undertaking for the person concerned.

There is no obligation on the recipient of a Notice to accept the offer (i.e., to provide the Undertaking). However, where the recipient intends to accept the offer, they must do so within 21 days (or within such longer period as may be allowed by the ODCE). During this offer period, neither the ODCE nor any other person who is aware of the issuing of the Notice may initiate proceedings for the restriction or disqualification of the recipient of the Notice on foot of the circumstances, facts and allegations as set out in the Notice.

Where a recipient of a Notice decides to accept the offer and to return a duly signed Undertaking Acceptance Form, they will be subject to a Restriction or Disqualification Declaration/Order on the same basis as if a restriction or disqualification had been imposed by the High Court. Therefore, any subsequent breach of the terms of the restriction or disqualification will constitute a criminal offence and will be the same as a breach of a Court-imposed restriction or disqualification.

Notwithstanding that company directors or other persons may have voluntarily provided Undertakings, they can, nevertheless, still apply to the Court – at any time during the currency of the restriction or disqualification – seeking to be relieved, in whole or in part, from the terms of the restriction or disqualification. Whilst any such applications will be considered by the ODCE on a case by case basis in the context of the particular facts and circumstances, having regard to the need to uphold the integrity of the process, the ODCE will, in most instances, oppose such applications.

With reference to disqualification, the legislation provides that the maximum duration of disqualification that the ODCE can offer by way of Undertaking is five years. Therefore, in circumstances where the ODCE forms the view that a period of disqualification in excess of five years is warranted (a determination that is made by reference to the particular facts and circumstances of each case and any relevant jurisprudence), an offer will not be made. Rather, the matter will be dealt with by way of an application to the High Court.

The undertakings framework ensures that company directors, who are found to be in breach of the Act and facing restriction or disqualification proceedings, are dealt with in an efficient and effective administrative manner without the need for the involvement of the Courts. Following the implementation of the undertakings process by the ODCE, 495²² undertakings for restrictions and disqualifications were accepted by the ODCE. While there is a significant additional administrative burden on the ODCE arising from this

²² Comprises of: 425 Restriction Undertakings, 23 Disqualification Undertakings and 47 Undertakings entered into by directors of dissolved insolvent companies.

process, it has resulted in substantial cost and time savings for the liquidators and company directors concerned, as well as for the Courts system. The savings in monetary terms are estimated at something of the order of €1m per annum.

Companies entering liquidation

As can be seen from the Table below:

- the total number of insolvent liquidations (i.e. creditors' and Court liquidations combined) remained static during the year; and
- solvent liquidations, which accounted for 73% of all liquidations, increased by 16% over the 2018 levels.

Table 6

Companies entering liquidation: 2013 - 2019

	2013	2014	2015	2016	2017	2018	2019
Creditors' liquidations	1,043	929	746	581	613	475	474
Court liquidations	76	78	70	61	63	59	62
<i>Total insolvent liquidations</i>	<i>1,119</i>	<i>1,007</i>	<i>816</i>	<i>642</i>	<i>676</i>	<i>534</i>	<i>536</i>
Members' liquidations	848	1,001	1,034	1,112	1,040	1,269	1,474
<i>Total solvent liquidations²³</i>	<i>848</i>	<i>1,001</i>	<i>1,034</i>	<i>1,112</i>	<i>1,040</i>	<i>1,269</i>	<i>1,474</i>
Total liquidations	1,967	2,008	1,850	1,754	1,716	1,803	2,010

Liquidators' s682 reports received – 2019

As can be seen from Table 5, a total of 872 liquidators' section 682 reports was received during the year (2018: 866), of which:

- 558 were initial reports²⁴ (2018: 606); and
- 314 were subsequent reports²⁵ (2018: 260).

The Table on page 26 provides details of the sectoral distribution of companies in respect of which liquidators' initial reports were received during the year.

²³ Whilst the Office has no role in solvent (i.e. members') liquidations, data in respect of same has been included in the interests of completeness.

²⁴ An initial report is the first report received from a liquidator and is required to be submitted within 6 months of his/her appointment. In the majority of cases, the decision as to whether or not to grant relief is made based on this report.

²⁵ In some cases a subsequent report is required from the liquidator when his/her investigations have progressed further. In circumstances where a subsequent report is considered to be necessary, 'relief at this time' is usually granted in respect of the initial report.

Table 7

Sectoral analysis of liquidators' initial section 682 reports received - 2019

Sector	2019		2018	
	Number	%	Number	%
Wholesale & retail	192	34	202	33
Construction	69	12	73	12
Community, social & other	44	8	47	8
Manufacturing & printing	27	5	33	6
Hotels, bars & catering	72	13	75	12
Marketing & promotion	7	1	10	2
Real estate & renting	34	6	49	8
Technology & telecommunications	38	7	37	6
Financial & leasing	39	7	40	7
Transport & distribution	14	3	18	3
Agriculture, mining & marine	9	2	7	1
Recruitment & security services	13	2	15	2
Total	558	100%	606	100%

Timeliness of liquidators' reporting

At year end, 96% of first reports due during the year had been received, with only 25 reports outstanding. The level of liquidators' failure to comply with their reporting obligations is low and, where appropriate, enforcement action, up to and including criminal prosecution, may result from such persistent breaches of statutory obligations.

Standard of liquidators' reporting

As reported in previous years, the standard of liquidators' reports received during the year was considered to be broadly satisfactory. However, in a small number of cases, the quality of reporting was not of the required standard. Where this arises, it is dealt with through engagement with the relevant practitioners. The vast majority of persons acting as liquidators are members of Prescribed Accountancy Bodies and, as such, are subject to supervision by their professional bodies.

Qualification for appointment as a liquidator or examiner

Also of relevance in the context of the foregoing is section 633 of the Act, which introduced rules for qualification to act as a liquidator. The Act defines five categories of individuals who are entitled to act as liquidators. These are:

- i. members of a Prescribed Accountancy Body holding a practising certificate;
- ii. solicitors holding a practising certificate;
- iii. members of any other professional bodies recognised for this purpose by IAASA (none currently);
- iv. persons qualified to act as a liquidator in another EEA²⁶ state; and
- v. persons with practical experience of windings-up and knowledge of relevant law prior to the commencement of the Act.

²⁶ European Economic Area (EU States plus Liechtenstein, Iceland and Norway)

Applications for authorisation under (v) above were required to have been submitted to IAASA by 1 December 2017. IAASA has authorised a total of 22 individuals under this category.

In addition to the qualification requirements prescribed in section 633, section 634 provides that all liquidators must have in place adequate professional indemnity insurance (“PII”). IAASA has issued Regulations prescribing the required level of PII required. These Regulations are available on IAASA’s website²⁷.

A related provision, section 519 of the Act, provides that a person can only act as an examiner if they are qualified to act as a liquidator.

Sectoral distribution of other external inputs (i.e. external inputs other than liquidators’ section 682 reports)

As can be seen from Table 5, in aggregate those external inputs other than liquidators’ section 682 reports accounted for 33% (2018: 33%) of total external inputs received during the year. The Table below provides an analysis of the sectoral distribution of those other external inputs.

Table 8

Sectoral distribution of external inputs other than liquidators’ section 682 reports

Sector	2019		2018	
	Number	%	Number	%
Real estate & renting	57	14	70	17
Not a company	81	19	50	12
Finance & leasing	43	10	47	11
Wholesale & retail	32	8	30	7
Construction	23	5	27	6
Marketing & promotion	13	3	5	1
Technology & telecommunications	30	7	38	9
Manufacturing & printing	24	6	28	7
Community, social & personal	49	12	40	9
Insurance, health & social work	18	4	39	9
Hotels, bars & catering	10	2	21	5
Transport & distribution	25	6	14	3
Agriculture, mining & marine	6	1	9	2
Recruitment & security services	6	1	2	1
Other business sectors	10	2	5	1
Total	427	100%	425	100%

²⁷ <http://iaasa.ie/getmedia/1a9c9ab1-994e-4491-8f6c-6d8a40d27f64/S-I-No-127-of-2016.pdf>

Complaints

The Office receives substantial numbers of complaints annually from members of the public. During the year under review a total of 254 complaints were received (2018: 247), which accounted for 19% (2018: 19%) of all external inputs received. The Table below provides an analysis of the subject matter of complaints received.

Table 9

Complaints received (analysed by character of primary reported default)

	2019	%	2018	%
Annual/Extraordinary General Meeting related	25	10	21	9
Directors' conduct (responsibilities & filing)	44	17	29	12
Allegations of reckless/fraudulent/insolvent trading	39	15	34	14
Allegations of forgery/furnishing of false information/ falsified documents	27	11	17	7
Relating to the issue of unpaid debts	6	2	10	4
Access to accounting records/minutes of meetings	7	3	9	4
Register of members related	16	6	19	7
Audit/auditor related	12	5	12	5
Receivership related	2	1	5	2
Issues relating to addresses	24	9	23	9
General shareholder rights issues	5	2	8	3
Acting as a director while a bankrupt/restricted/disqualified	0	0	5	2
Companies trading whilst struck off the Register/dissolved	9	4	10	4
Relating to improper use of the word "Limited"	1	1	2	1
Liquidation/phoenix activity	10	4	10	4
Other	27	10	33	13
Total	254	100%	247	100%

Auditors' indictable offence reports

Introduction – overview of the auditor reporting regime

Section 393(1) of the Act provides that, where, in the course of and by virtue of their carrying out of an audit, information comes into the possession of a company's auditors which leads them to form the opinion that there are reasonable grounds for believing that an indictable offence under the Act has been committed by the company, or an officer or agent of the company, the auditors are required to report that opinion to the ODCE.

Nature of suspected offences reported

During the year under review, a total of 105 (2018: 73) indictable offence reports were received from auditors. The Table below provides an analysis of the nature of suspected offences notified in those reports. It should be noted that the number of reports received does not accord with the number of suspected offences reported as, in a number of instances, reports received included reference to more than one suspected offence.

Table 10

Analysis of suspected indictable offences reported by auditors

	2019	%	2018	%
Directors' loan infringements	25	24	21	29
Failure to maintain proper accounting records	5	5	13	18
Provision of false statements to auditors	0	0	1	1
Issues relating to access to accounting records	0	0	1	1
Issues relating to the directors' approval of Financial Statements	0	0	2	3
Obligation to prepare Group Financial Statements	2	2	1	1
Entity Financial Statements	72	68	34	47
Falsification of books or documents	1	1	0	0
Total	105	100%	73	100%

Examiners' Reports

Pursuant to section 534(6) of the Act, where an examiner is appointed to a company, s/he shall, as soon as may be after it is prepared, supply a copy of the report to the ODCE. During the year under review, 27 such reports were received (2018: 41).

Referrals

As alluded to earlier in this Chapter, the Office forms part of a broader statutory framework that permits the exchange of confidential information between regulatory, enforcement and other relevant bodies, subject to safeguards and appropriate limitations. In that context, the Office receives referrals from other statutory bodies and entities from time to time. During the year under review, the Office received 12 (2018: 19) such referrals from a variety of sources.

Professional bodies' indictable offence reports

Recognised Accountancy Bodies ("RABs")²⁸

Where a RAB's Disciplinary Committee or Tribunal has reasonable grounds for believing that an indictable offence under the Act may have been committed by a person while that person was a member of the RAB, the RAB is required to report the matter to the Office²⁹.

Prescribed Professional Bodies ("PPBs")

Where the Disciplinary Committee or Tribunal of a PPB finds that a member conducting an examinership or receivership has not maintained appropriate records, or has reasonable grounds for believing that the member has committed an indictable offence under the Act during the course of an examinership or receivership, the PPB concerned is required to report the matter to the Office.

Prescribed accountancy bodies are so deemed by virtue of IAASA's recognition of them as such as per Part 15 of the Act.

'Prescribed professional body' in relation to sections 488, 558, and 688 refers to a Disciplinary Committee or a Tribunal of a Prescribed Professional Body associated with section 633 (setting qualifications for appointment of examiners and receivers).

The bodies are:

- ACCA - Association of Chartered Certified Accountants
- AIA - Association of International Accountants
- CIMA - Chartered Institute of Management Accountants
- CIPFA - Chartered Institute of Public Finance and Accountancy
- ICAEW - Institute of Chartered Accountants in England & Wales
- ICAI - Institute of Chartered Accountants in Ireland
- ICAS - Institute of Chartered Accountants of Scotland
- ICPAI - Institute of Certified Public Accountants in Ireland
- Law Society of Ireland

On 19 December 2018, S.I. No. 570 of the 2018 Companies Act 2014 (Prescribed Professional Bodies) Regulations 2018 prescribing professional bodies pursuant to Sections 448 and 558 of the Companies Act 2014 came into effect. The regulations cover the reporting obligations of professional bodies where they detect misconduct by their members while acting as Receivers or Examiners. No reports of this nature were received from PPBs during the year (2018: 0).

²⁸ A RAB is an accountancy body that is permitted to authorise its members and member firms, subject to those members having satisfied certain criteria, to act as statutory auditors and audit firms respectively. There are six RABs, i.e., the:

- Association of Chartered Certified Accountants (ACCA)
- Institute of Certified Public Accountants (ICPAI)
- Institute of Chartered Accountants in England & Wales (ICAEW)
- Institute of Chartered Accountants in Ireland (ICAI)
- Institute of Chartered Accountants of Scotland (ICAS)
- Institute of Incorporated Public Accountants (IIPA)

²⁹ Section 931(4) of the Act

Liquidators' reports regarding possible criminality

In addition to their reporting obligations under section 682 as detailed above, in accordance with section 723(5) of the Act, liquidators are required, in circumstances where it appears that any past or present officer of the company concerned has been guilty of any offence in relation to the company, to make a report to the DPP and also to refer the matter to the ODCE. This reporting obligation extends to all liquidations, solvent and insolvent (i.e. both Members' and Creditors' Voluntary liquidations and Court liquidations) alike. One such report was received by the Office during the year (2018: 1).

Disclosures under the Protected Disclosures Act 2014³⁰

Section 22 of the Protected Disclosures Act 2014 provides that every public body shall prepare and publish, not later than 30 June each year, a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved. The abovementioned report is required to specify:

- i. the number of protected disclosures made to the public body;
- ii. the action (if any) taken in response to those protected disclosures; and
- iii. such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time.

The Office's report under section 22 is set out at Appendix 3 to this Report.

INTERNAL INPUTS

Introduction

As will be evident from the earlier part of this Chapter, the volume of external inputs received is such that most case files opened within the Office are opened in response to what are termed "external inputs", e.g., auditors' reports, liquidators' reports and complaints from members of the public. Alongside those external inputs, the Office also generates what are termed "internal inputs" through a proactive approach to enforcement of the Act.

The nature and composition of internal inputs varies from year to year having regard to a number of relevant considerations, including:

- the Office's particular compliance and/or enforcement objectives in that particular year or over a particular cycle;
- thematic and/or once-off issues arising;
- available staff resources and the associated skillsets; and
- other relevant facts and circumstances.

Internal inputs can, therefore, range across a variety of enforcement headings. Illustrative examples include:

- actions focussing on particular cohorts of persons, e.g., persons who are undischarged bankrupts, restricted or disqualified;
- civil or criminal enquiries commenced on own initiative;
- actions in respect of dissolved insolvent companies; and
- actions relating to liquidator performance/behaviour.

³⁰ The Protected Disclosures Act 2014 is available at <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>

Actions focussing on particular cohorts of persons

During the course of the year under review enquiries were initiated in a number of instances in which suspicions arose that persons who were undischarged bankrupts, disqualified or restricted may have been acting as company directors or in other specified roles (e.g., such as auditors) while not permitted to do so (or, in the case of restricted persons, only subject to certain conditionality).

Investigations commenced on own initiative

As indicated above, the Office initiates civil and criminal enquiries and investigations on its own initiative where this is considered necessary or otherwise appropriate having regard to the underlying facts and circumstances. The triggers for such actions can include, for example:

- issues identified internally;
- issues referred internally;
- issues identified on foot of a review of material filed with the CRO or other relevant documentation;
- issues identified through monitoring of litigation;
- issues identified through a review of press reportage, the internet, social media etc.

Depending upon the nature of the underlying circumstances, these enquiries and investigations may be furthered through the use of:

- the Director's civil investigative powers;
- the Director's criminal investigative powers; and/or
- the powers vested in the Gardaí seconded to the Office by virtue of those officers being members of An Garda Síochána.

Dissolved insolvent companies

The Office characterises as “*dissolved insolvent companies*” those companies that:

- are struck off the Register for failure to file their annual returns; and which
- at the date of strike off, had liabilities, whether actual, contingent or prospective.

It is open to the Office to apply to the High Court for the disqualification of the directors of such struck off companies³¹. However, company law also provides³² that the Court cannot disqualify a person who demonstrates to the Court that the company had no liabilities at the time of strike off or that those liabilities had been discharged before the initiation of the disqualification application. In considering the sanction to be imposed, the Court may instead restrict³³ the director(s) where it adjudges that disqualification is not warranted under the particular circumstances³⁴.

Where there is evidence to suggest that a company was insolvent at the date upon which it was struck off the Register, it is the Office's policy to consider seeking the disqualification of the company's directors. This is because, by allowing the company to be struck off the Register, the directors avoid bringing the company's existence to a conclusion in the appropriate manner, i.e., through the appointment of a liquidator. By not appointing a liquidator, the company's directors also avoid the scrutiny of their behaviour as provided for by section 682 of the Act.

³¹ Section 842(h) of the Companies Act 2014

³² Section 843(3) of the Companies Act 2014

³³ Section 819 of the Companies Act 2014

³⁴ Section 845(3) of the Companies Act 2014

Where it appears to the Office that a director is liable to be disqualified in these circumstances, it may offer the individual concerned the opportunity to voluntarily submit to a Disqualification Undertaking. In the context of the foregoing, also worthy of note is the fact that, where a company is struck off the Register, its remaining assets are vested in the Minister for Public Expenditure & Reform in accordance with the provisions of the State Property Act 1954.

During 2019 the Office examined the actions of the directors of 19 companies which were struck off the Register whilst having significant outstanding liabilities. As a result of the examination of the aforementioned 19 companies (together with the examination of a further 59 related companies):

- 22 directors of 11 companies submitted to Disqualification Undertakings under section 851 of the Act; and
- 2 companies were restored to the Register.

It is anticipated that, during 2020, a similar number of directors will be disqualified in these types of cases, either by way of High Court applications under section 842(h) or by voluntarily consenting to Disqualification Undertakings under section 852 of the Act.

Actions relating to liquidator performance/behaviour

One of the statutory functions of the Director is to:

“...exercise, insofar as the Director considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act”³⁵.

Whilst the section 682 Liquidators report process, as outlined earlier in this Chapter, provides the Office with a means of indirectly supervising certain aspects of liquidators’ work, from time to time the Office considers it appropriate or otherwise necessary to engage in more direct supervision of liquidators’ work. This, more direct, supervision is effected through the exercise of the powers conferred by section 653 of the Act³⁶.

Section 653 of the Act provides that the Director may:

- either on his own initiative or on foot of a complaint from a member, contributory or creditor of a company, request production of a liquidator’s books for examination – either in relation to a particular liquidation process, or to all liquidations undertaken by the liquidator; and
- seek the liquidator’s answers to any questions concerning the content of such books, and all such assistance in the matter as the liquidator is reasonably able to give.

The powers conferred upon the Director by section 653 are accompanied by certain safeguards and limitations, i.e.:

- the Office must inform the respondent liquidator of the reason(s) as to why the request is being made; and
- a request may not be made in respect of books relating to a liquidation that has concluded more than six years prior to the request.

Quantum of internal inputs - 2019

During the course of 2019, a total of 43³⁷ (2018: 79) internal inputs were generated.

³⁵ Section 949(1)(e) of the Companies Act 2014

³⁶ Section 446 of the Act includes a similar provision relating to receivers

³⁷ Relating to the broad categories of bankruptcy, disqualification, restriction and examinership.

— PART B: THROUGHPUTS

Generally speaking, inputs, irrespective of whether from internal or external sources, result in the opening of a case file. In the case of liquidators' section 682 reports, cases generally conclude when a decision has been taken as to whether or not to relieve the liquidator of the obligation to seek the company's directors' restriction/disqualification and, where relief is granted, the file is usually closed.

Where relief is not granted, or only partially granted (i.e., granted in respect of some, but not all, of the directors), the Office will usually invite the relevant director(s) to enter into a Restriction (or Disqualification, if applicable) Undertaking. If the offer of an Undertaking is not accepted (or if the case is not one in which, in the Office's assessment, an Undertaking offer is appropriate), a Court application will require to be made by the liquidator. The Office monitors the progress through the Courts of the relevant restriction or disqualification proceedings and the outcome is recorded once the proceedings have been determined. However, the Office also reviews cases from time to time where concerns come to its attention regarding, for example:

- credible suggestions of excessive liquidators' fees;
- apparent failures to distribute assets on a timely basis; and
- apparent failures to conclude a liquidation within a reasonable timeframe.

In the case of other inputs, such as, for example, auditors' reports, public complaints, protected disclosures, referrals etc., a file is opened and the subject matter is examined to determine, in the first instance, whether the matter is one that comes within the Office's remit. Thereafter, cases are progressed on the basis deemed most appropriate to their individual circumstances, with methods of progression including, for example:

- meeting the complainant, typically with a view to obtaining an enhanced understanding of the issues being complained of;
- meeting the directors (for example, in a case relating to directors' loans);
- exercising civil powers, such as, for example, issuing demands to:
 - » companies and their directors for the production of the minutes of meetings and statutory registers;
 - » companies and their directors for the production of the company's books and documents;
 - » liquidators for the production of their books and documents, i.e., the liquidator's own books and documents as distinct from those of the company in liquidation (which may, in parallel, be sought);
 - » auditors requiring the provision of supplementary information regarding an indictable offence report received;
 - » persons acting, or purporting to act, as auditors for the production of evidence of their qualifications;
 - » bankrupts who are acting as company directors and secretaries, seeking sworn statements relating to their insolvency status; and
 - » liquidators requiring that they file outstanding section 682 reports;
- exercising criminal powers, such as, for example, executing search warrants obtained from the Courts, exercising the powers of arrest and detention etc.;
- liaising with other statutory authorities potentially being in a position to assist the Office's enquiries, for example through the sharing of relevant information.

Upon completion of the Office's enquiries, a decision is made as to the most appropriate course of action to be taken. This can include, for example:

- the decision to take no further action (for example, where enquiries suggest that there has been no breach of company law or where the breach is minor in nature and enforcement action would, as a consequence, be disproportionate);
- a decision not to take enforcement action on this occasion but, rather, to issue a warning that any recurrence will precipitate enforcement action (for example, where the breach has been rectified and/or remediated and rectification/remediation has been evidenced to the ODCE's satisfaction);

- referral to other statutory authorities or professional bodies of matters relevant to their respective remits;
- the issuing of civil directions, e.g., directions to companies and/or their directors requiring the remedying of stated defaults within prescribed timeframes;
- the initiation of civil proceedings, i.e., Court applications for the purpose of seeking specified remedies;
- the initiation of summary criminal proceedings or referral of the matter to the DPP for consideration as to whether charges should be directed on indictment.

Set out in the following Tables are details of the various caseloads progressed by the Office during the year under review. Details of the outputs that flow from the processing of the Office's various caseloads are detailed in the next section of this Chapter.

Table 11

Throughput of liquidators' section 682 reports - 2019

Section 682 reports on hand at 1 January, 2019		306
All reports received during 2019	872	
Less: Reports the subject of determinations during 2019	963	
Section 682 reports on hand at 31 December, 2019		215

Table 12

Throughput of other cases - 2019

Other cases on hand at 1 January, 2019		154
New cases opened during 2019	470	
Less: Cases concluded during 2019	430	
Other cases on hand at 31 December, 2019		194

— PART C: OUTPUTS

Insolvency-Related Enforcement Measures & Outputs 2019 Arising From Section 682 Liquidator Reports and Examination of Dissolved Insolvent Companies.

KEY OUTPUTS AND STATISTICS

Outputs from the section 682 process (i.e., liquidator reporting)

The Office made definitive decisions (i.e. decisions other than to grant 'Relief at this time') on 632 liquidators' reports during 2019 (2018: 701), with a further 331 decisions made to grant 'Relief at this time' (2018: 270).

Of the 632 definitive decisions taken during 2019, a total of 498 were made in respect of initial reports (2018: 545), with a further 134 being made in respect of subsequent reports (2018: 156).

The decisions taken in respect of initial and subsequent reports respectively are analysed in Tables 13, 14 & 15 below.

Table 13

Analysis of decisions taken in respect of all liquidators' section 682 reports

Decision type	2019	%	2018	%
Full relief ³⁸	525	55	602	62
No relief ³⁹	75	8	70	7
Partial relief ⁴⁰	21	2	25	3
Relief at this time ⁴¹	331	35	270	28
Total	952	100%	967	100%

Table 14

Analysis of decisions taken in respect of initial liquidators' section 682 reports

Decision type	2019	%	2018	%
Full relief ³⁸	448	73	497	74
No relief ³⁹	34	5	39	6
Partial relief ⁴⁰	10	2	8	1
Relief at this time ⁴¹	124	20	129	19
Total	616	100%	673	100%

38 Full relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), all of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

39 No relief is granted in cases where the Office forms the opinion that, based on the information available (including the liquidator's report(s)), there is insufficient evidence to demonstrate that any of the directors of the insolvent company acted honestly and responsibly in the conduct of the company's affairs.

40 Partial relief is granted in circumstances where, based on the information available (including the liquidator's report(s)), the Office forms the opinion that some, but not all, of the directors of the insolvent company appear to have acted honestly and responsibly in the conduct of the company's affairs.

41 Relief at this time is granted in cases where the Office is satisfied that the liquidator needs more time in which to progress/complete his/her investigations into the circumstances giving rise to the company's demise. Similarly, on occasion, the Office considers it necessary to postpone making a definitive decision due to the complexity of certain companies' affairs and the associated necessity for supplemental engagement with the liquidators concerned. Where 'Relief at this time' is granted, the liquidator will be required to submit a subsequent report.

Table 15

Analysis of decisions taken in respect of subsequent liquidators' section 682 reports

Decision type	2019	%	2018	%
Full relief ³⁸	77	23	105	35
No relief ³⁹	41	12	31	11
Partial relief ⁴⁰	11	4	17	6
Relief at this time ⁴¹	207	62	141	48
Total	336	100%	294	100%

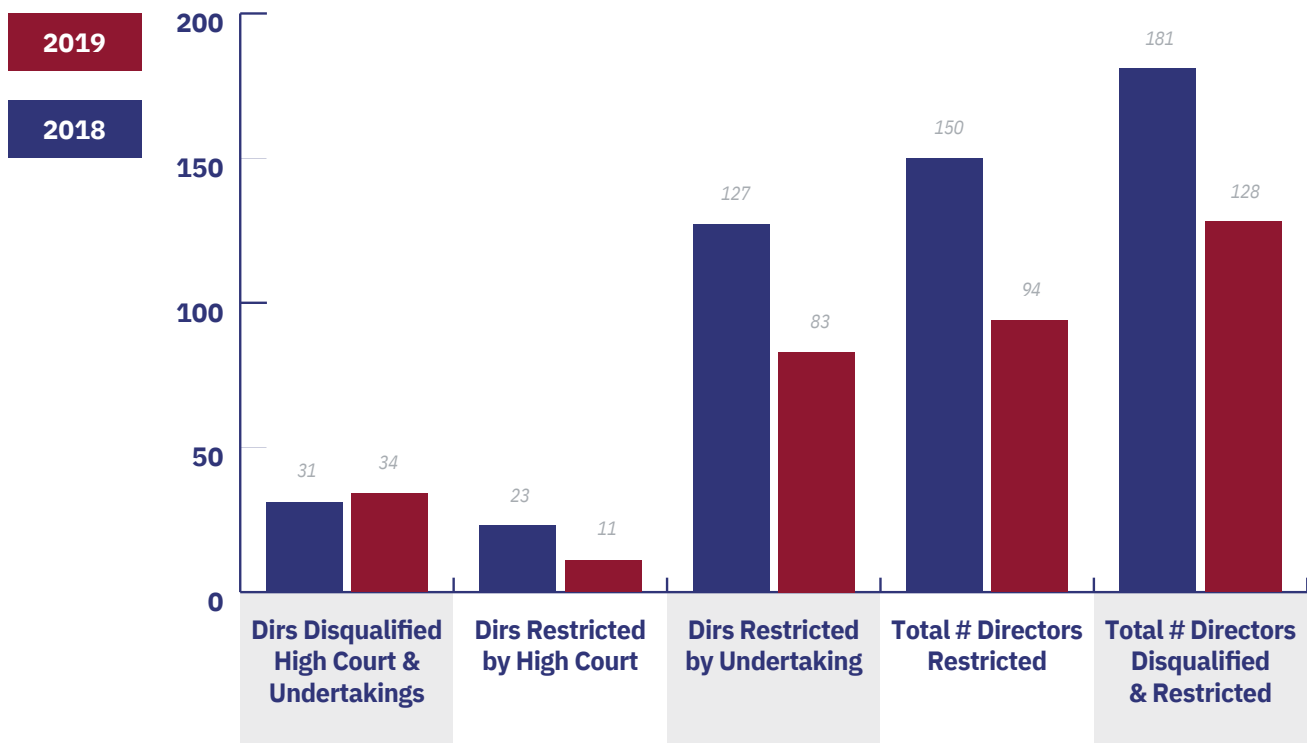
Chart 1: Restrictions & Disqualifications 2018/2019

Chart 2: Profile of ODCE adjudications and related statistical data 2018/2019 - Insolvency Related Statistics

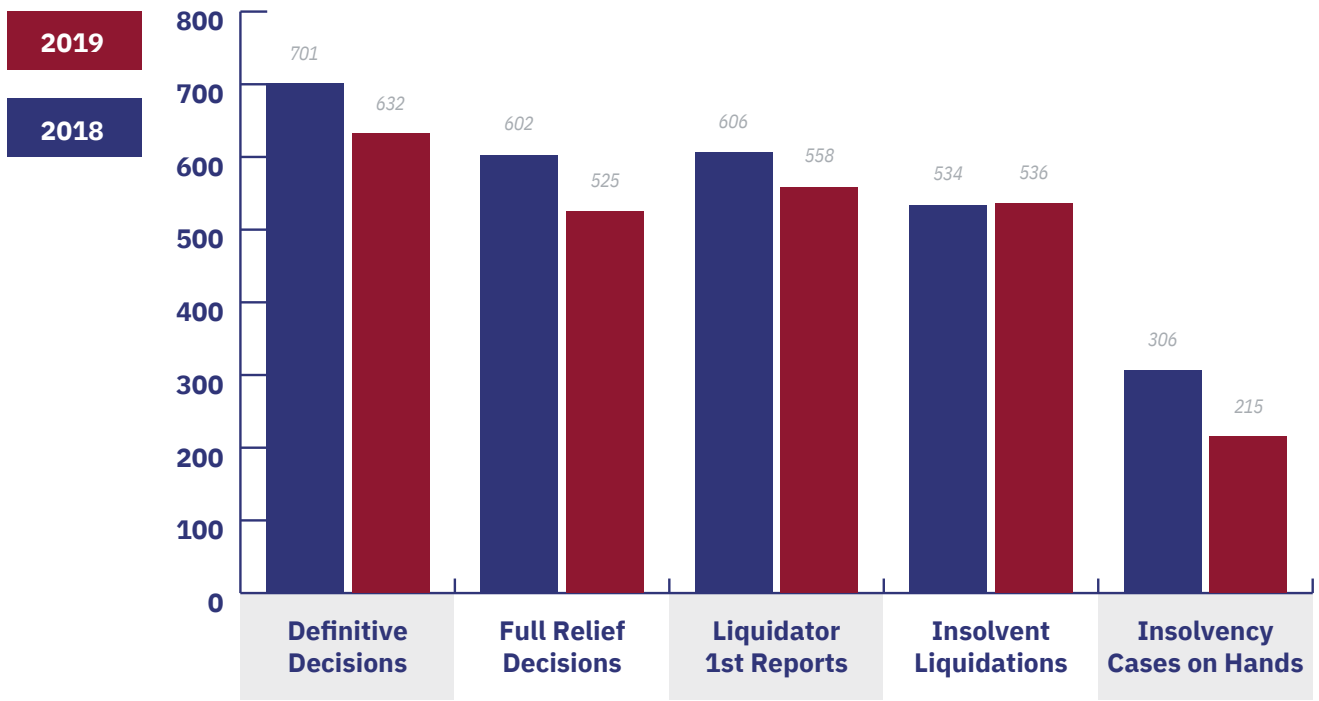
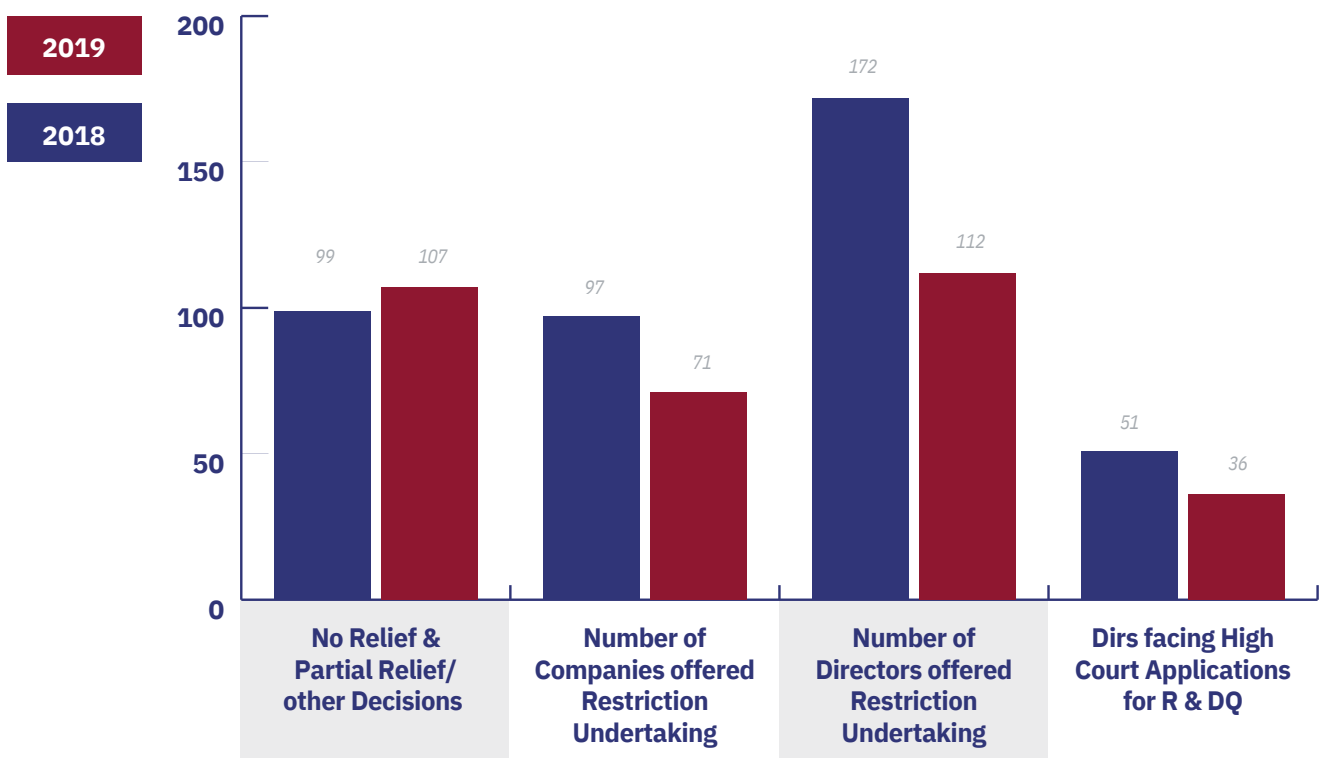


Chart 3: Profile of ODCE adjudications and related statistical data 2018/2019 - Decisions & RU Offers



Restriction and Disqualification Undertakings

As detailed earlier in this Chapter, following the commencement of the Act on 1 June 2015, the ODCE introduced a procedure whereby those directors, in respect of whom it is determined that the liquidator should not be relieved of the obligation to apply to the High Court for their Restriction, may be invited to voluntarily submit to a Restriction (or Disqualification, if applicable) Undertaking.

During 2019, 112 directors of 71 insolvent companies were offered Restriction Undertakings and 11 directors of 8 insolvent companies were offered Disqualification Undertakings.

The Table below sets out the number of Undertaking offers issued during the year under review, together with details of the number of offers accepted and not accepted at the year end. Of the offers of a Restriction Undertaking made to 112 directors during 2019, 79 were accepted. In addition, 4 further offers of Restriction Undertakings made in 2018 were also accepted in 2019, bringing the total number of directors Restricted by Undertakings in 2019 to 83.

Table 16

Undertaking offers issued to directors in 2019 and accepted/not accepted in 2019

	2019 Directors	2018 Directors
Restrictions:		
Number of offers issued	112	172
Number of offers accepted	83	127
Number of offers not accepted	29	45
Disqualifications:		
Number of offers issued	11	8
Number of offers accepted	8	3
Number of offers not accepted	3	5

Liquidators' Court Applications

As indicated earlier in this Chapter, where not granted relief by the Office and where invitations to submit to Undertakings are not offered or not accepted, liquidators are required to apply to the High Court seeking the restriction or disqualification of relevant company directors. At 31 December 2019 a total of 36 directors who had declined to enter into Undertakings in respect of decisions made during the year faced such proceedings.

It is important to note that, at any given time, a considerable number of company directors face restriction or disqualification proceedings before the High Court. A further cohort of directors who, prior to 2019, were either not offered Undertakings or who did not accept Undertakings continue to face restriction or disqualification proceedings.

The Table on page 40 sets out details of the results of liquidators' applications to the High Court during the year.

Table 17**Results of liquidators' Court applications - 2019**

	2019		2018	
	Cases	Directors	Cases	Directors
Restriction Declarations granted	6	11	14	23
Disqualification Orders granted	3	4	5	7
Declarations or Orders not granted	2	4	0	0

On foot of Undertakings or Court Orders, a total of 94⁴² (2018: 150) directors were restricted and 12⁴³ (2018: 10) directors disqualified. In addition, 22 directors of dissolved insolvent companies consented to Disqualification Undertakings. Further details of the Orders made by the Court on foot of liquidators' applications and on foot of Undertakings is provided in Appendices 4 and 5.

Facts and circumstances considered by the High Court in making Disqualification Orders and by the ODCE in offering Disqualification Undertakings

Set out below are examples of the types of issues that were considered by the High Court in making Disqualification Orders or to which regard was had by the ODCE in offering Disqualification Undertakings, and in response to which Undertakings were accepted. The full list is set out at Appendix 5. The Orders/ Undertakings were on foot of liquidators' section 682 reports or following an examination by ODCE of the actions of directors of dissolved insolvent companies and, where necessary, the provision of additional information and clarification as sought by the ODCE:

- the actions of two directors of a dissolved insolvent company (i.e. a company struck-off the Register of Companies in accordance with Section 733 of the Companies Act 2014) were examined. All other companies that the directors of this company were associated with were also examined and, of these, 2 companies had also been involuntarily struck off the Register of Companies for failure to file annual returns. An examination of the last annual returns filed in respect of these companies found that the balance sheets recorded aggregate creditors totalling over €1.7m. The directors did not contest these figures and did not take remedial measures to correct them. Both directors consented to Disqualification Undertakings for a period of 4 years;
- an examination of the activities of two directors of a dissolved insolvent company found that there had been a failure to file annual returns in respect of three companies of which they were directors. The Revenue Commissioners advised the ODCE of a default of €250,240 in tax and interest in respect of two of the companies. The last annual returns filed in respect of all companies recorded creditors totalling €286,081 in respect of two of the companies. A search indicated that there were four unsatisfied judgements registered against one of the companies. The directors did not contest the findings of the ODCE and did not take remedial measures to correct them. Both directors consented to Disqualification Undertakings for a period of 4 years;
- the directors of two separate and unconnected dissolved insolvent companies which were in default of €483,876 and €152,117 in tax and interest respectively did not contest the findings of the ODCE and took remedial measures to correct the defaults. Both companies have since been restored to the Companies Registration Office register, one by way of H1-Restoration of Company to the Register on application to the Registrar and the other on application to the High Court. The outstanding tax liabilities for both companies have been addressed with the Revenue Commissioners;

⁴² Appendix 4

⁴³ Appendix 5

- a company operating as a distributor of online gift vouchers traded for three years and went into liquidation in 2014. The directors of the company were resident outside Ireland and lived on the European mainland. The directors had put in place a corporate structure that would ensure that the company paid no corporation tax. The directors claimed to rely on advice provided by a UK based tax adviser, however this advice related to the UK tax system only. The company transferred virtually all of its surplus funds to an offshore Remuneration Trust. Payments to the trust over the lifetime of the company amounted to approximately €18m. Following an audit by the Revenue Commissioners the total outstanding revenue liability stood at €8.4m. Neither director made an appearance in court and, based on the evidence of the liquidator, one of the directors was found to be unfit to be concerned with the management of a company by the High Court and was disqualified as a director for a period of 7 years. Proceedings against the second director are ongoing by the liquidator at this time;
- a company which traded as a furniture importer went into liquidation in 2017. The company was in default of its Revenue obligations from 2014 but continued to trade. The company was struck off the Register of Companies in April 2016 for failing to file Annual Returns. The company's financial statements showed a deficit of €170,518 at liquidation. The liquidator found that the directors' decision to continue trading was one of the key reasons for the liquidation and contributed to the extent of the deficit to the creditors. The company continued to trade whilst struck-off and was restored to the Register in August 2016. Both directors consented to Disqualification Undertakings for a period of 5 years;
- two directors of an installation and maintenance of heating and air conditioning systems company which traded for 23 years were offered Restriction Undertakings. However, both refused to accept the offer. The liquidator found that the company's directors failed to wind up the company in a timely manner, failed to maintain proper books and records and that a phoenix company was operated by the directors, which took over the trade, business and assets of the company, whilst the company was left insolvent with substantial debts. The High Court disqualified both directors for a period of 5 years.

Facts and circumstances considered by the High Court in making Restriction Orders and by the ODCE in offering Restriction Undertakings

Set out below are examples of the types of issues that were considered by the High Court in making Restriction Orders or to which regard was had by the ODCE in offering Restriction Undertakings and in response to which Undertakings were accepted. The full list is set out at Appendix 4 to this Report. The Orders/Undertakings were on foot of liquidators' section 682 reports and, where necessary, the provision of additional information and clarification as sought by the ODCE:

- the directors of a company which provided veterinary and hygiene supplies to farmers went into liquidation in 2018 following a finding of non-compliance with Department of Agriculture requirements for the sale of veterinary products. The company owed €548,000 to trade creditors and €18,000 to the Revenue Commissioners at liquidation. Based on evidence presented by the liquidator, the two company directors were found not to have acted responsibly in relation to the conduct of the company's affairs. The directors were not compliant with their reporting obligations to the Revenue Commissioners and did not maintain proper books and records. In addition, the directors failed to provide financial statements as required, provided a materially inaccurate Statement of Affairs, overstated the net financial position of the company thereby potentially misleading creditors and others to their disadvantage and made fraudulent preference payments to themselves. Both directors consented to Restriction Undertakings for a period of five years;
- a clothing company went into liquidation in July 2018. The company owed €96,000 to creditors and a further €56,000 to the Revenue Commissioners at liquidation. Based on evidence presented by the liquidator, it was determined that the two company directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The directors failed in their obligations to provide the liquidator with the books and records of the company and failed to co-operate with the liquidator. The directors were not compliant with their reporting obligations to the Revenue Commissioners and the Companies Registration Office. Both directors consented to Restriction Undertakings for a period of five years;

- the directors of a company engaged in the provision of IT consultancy services went into liquidation in 2016. The company owed €124,000 to creditors and €95,000 to the Revenue Commissioners at liquidation. Based on evidence presented by the liquidator, it was determined that the two company directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The directors allowed the company to trade for a protracted period while insolvent, to the detriment of creditors. The directors were not compliant with their reporting obligations to the Revenue Commissioners. In addition, the directors provided a materially inaccurate Statement of Affairs potentially misleading creditors and others to their disadvantage. A significant redundancy payment was made illegally to one of the directors. Monies were withdrawn from the company and paid to the directors contrary to section 240 of the Companies Act 2014 and in preference to the payment of Revenue liabilities and at a time when the company was insolvent. Both directors consented to Restriction Undertakings for a period of five years;
- a company operating as a stage and dance school traded for three years and went into liquidation in 2017. Based on the evidence provided by the liquidator, one company director failed to demonstrate that he had acted honestly and responsibly in relation to the conduct of the company's affairs while the other director was found to have had no involvement in the business. The liquidator was relieved of his obligation to make an application for the restriction of the second director. The remaining director allowed the company to continue to trade for a protracted period when he knew, or ought to have known, that the company was insolvent. The liquidator also found that he did not maintain proper books and records and that the company was not compliant with its obligations to the Revenue Commissioners and failed to discharge liabilities to Revenue as they fell due. In addition, employees of the company were treated as contractors and were not registered for PAYE/PRSI and no payslips were provided to these employees. The evidence suggested that the director used company monies for personal purposes. The director consented to a Restriction Undertaking for a period of five years;
- a company operating for the purpose of selling furniture and the sale and fit out of curtains, carpets, doors and blinds for a three-year period went into liquidation in 2018. Based on the evidence of the liquidator, it was determined that the director had failed to demonstrate that he had acted honestly and responsibly in relation to the conduct of the company's affairs. The director of the company was not compliant with his obligations to the Revenue Commissioners and failed to discharge liabilities to Revenue as they fell due, which led to the Revenue Commissioners petitioning the High Court to have the company wound up. At the date of liquidation, tax liabilities stood at approximately €117,000. The director did not fully co-operate with the liquidator in the performance of his duties. The company was allowed to continue to trade for a protracted period when the director knew, or ought to have known, that the company was insolvent. Proper books and records were not maintained and insufficient company records were provided to the liquidator to facilitate a full investigation into the affairs of the company. The director preferred certain unsecured creditors over the Revenue Commissioners and monies collected by the company for VAT and PAYE/PRSI were used to pay those creditors. The director consented to a Restriction Undertaking for a period of five years;
- a company operating a number of petrol stations for over 40 years went into liquidation on foot of a petition to the High Court by a creditor who was owed €118,000. Based on the evidence of the liquidator, it was determined that the directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The directors failed to provide the liquidator with a copy of the company's Statement of Affairs thereby breaching a High Court Order. The directors failed to co-operate with the liquidator with regard to details surrounding assets that were sold immediately prior to liquidation and also failed to provide him with title documents of property assets on the company's fixed assets register. Proper books and records were not maintained and the directors allowed the company to continue to trade when they knew or ought to have known that the company was insolvent and could not pay its debts. The directors consented to a Restriction Undertaking for a period of five years;
- a company trading as a café went into liquidation in 2018. The company which had a small turnover had a closing deficit of circa. €100,000 at liquidation. Based on the evidence of the liquidator, it was determined that the director had failed to demonstrate that he had acted honestly and responsibly in relation to the conduct of the company's affairs. The director did not co-operate with the liquidator and failed to produce cash sheets and bank statements. The liquidator found that the director of the company was not compliant

with his obligations to the Revenue Commissioners, was consistently late in making returns and failed to discharge liabilities to Revenue as they fell due. The Revenue Commissioners were due €79,000 at liquidation. The director consented to a Restriction Undertaking for a period of 5 years;

- a company operated in the industrial cleaning sector from 2008 until liquidation in 2018. It was determined that the directors had failed to demonstrate that they had acted honestly and responsibly in relation to their conduct of the affairs of the company. Based on the evidence provided by the liquidator, the directors had not filed accounts from 2015. The directors failed to provide the liquidator with management accounts, minutes of board meetings and bank, creditor and debtor reconciliations. Monies rightfully due to be paid into the company's accounts were lodged to an account in the name of one of the directors and no satisfactory explanation or reconciliation was provided by the directors to the liquidator. Directors' borrowings were in excess of 10% of the net assets of the company and, as such, breached section 239 of the Companies Act 2014. Both directors consented to Restriction Undertakings for a period of five years;
- a company incorporated in April 2006 commenced trading in the construction industry in 2007 and went into liquidation in December 2014 on foot of a Court Order obtained by the Revenue Commissioners. Based on the evidence of the liquidator, it was determined that the directors had failed to demonstrate that they had acted honestly and responsibly in relation to the conduct of the company's affairs. The company had several judgements against it made by the Collector General in 2013 and 2014. The directors were not compliant with their obligations to the Revenue Commissioners and failed to discharge significant Revenue liabilities of €478,545. Both directors consented to Restriction Undertakings for a period of five years.

Outputs from enforcement work

The Office's enforcement work takes a variety of forms, including:

- engaging with company directors and other interested parties with a view to securing the voluntary rectification/remediation of instances of non-compliance;
- exercising the Director's powers to secure compliance and/or to progress enquiries and investigations;
- exercising the Director's functions to permit/facilitate compliance;
- seeking civil remedies in the High Court in response to indications of non-compliance;
- taking summary criminal proceedings before the District Court;
- where, having conducted an investigation and concluded on the basis of same that the indications of suspected criminality are such that trial on indictment may be warranted, referring investigation files to the DPP for consideration as to whether the matters therein warrant criminal prosecution before the Circuit Court; and
- referring indications of possible breaches of regulatory provisions other than those relating to company law to other relevant regulators (incorporating also the referral of relevant matters to professional bodies);

The principal outputs associated with the Office's enforcement activities are detailed below.

Securing voluntary rectification/remediation

Directors' loans infringements

In 23 cases (2018: 18) where suspected directors' loan infringements had been reported by auditors, or had otherwise come to attention, the Office's actions resulted in rectifications (including the repayment/reduction of loans) totalling €27.2m (2018: €6.1m). Such rectifications are in the interests of affected companies' members and creditors.

Failure to comply with accounting standards

Section 291(3) of the Act requires companies to prepare their financial statements, *inter alia*, in accordance with applicable accounting standards. Section 291(9) provides that failure to comply with that requirement is a Category 2 offence on the part of the company and any officer in default. In 2019, 72 (2018: 34) instances of companies' failure to comply with accounting standards were reported to the Office by way of indictable offence reports.

Persons acting as company directors while not permitted to do so

During the year, the Office undertook a review of the register of disqualified and restricted persons as maintained by the Registrar of Companies. Arising from the review, 31 persons (2018: 67) appeared to be in contravention of such orders and undertakings. Following ODCE intervention, the individuals' positions were regularised.

Total cautions issued

In addition to the foregoing, cautions issued to a total of 28 companies (2018: 63) on a variety of matters.

Securing compliance and progressing enquiries and investigations through the exercise of the Director's statutory powers

A broad range of legislative provisions were utilised during the course of the year under review in order to both secure compliance with company law and to progress enquiries and investigations respectively. Specific outputs in that regard included:

- serving 6 statutory directions to produce specified books or documents under section 778 of the Act (2018: 5);
- serving 2 statutory directions requiring third parties to produce books and documents under section 780 of the Act (2018: 1)
- serving 39 statutory requests on auditors for information under section 393 of the Act (2018: 39);
- serving 12 statutory requirements on companies to produce minutes of directors' meetings under section 166 of the Act (2018: 45);
- serving 2 statutory requirements to produce minutes of general meetings under section 199 of the Act (2018: 3);
- serving 28 orders under Section 52 Criminal Justice (Theft and Fraud Offences) Act 2001 (2018: 16)
- issuing 48 statutory directions (2018: 48), pursuant to section 797(1) of the Act, requiring liquidators to comply with their obligations (reporting and Court applications) under section 682;
- issuing 4 directions under section 797 of the Act in relation to Court Order Compliance (2018: 4);
- issuing 2 directions under Section 335(5) of the Act in relation to the availing of audit exemption (2018: 2);
- issuing 1 direction under Section 791 of the Act in relation to the disclosure of information for certain purposes (2018: 1);
- the execution of 4 search warrants pursuant to section 787 of the Act (2018: 0);
- the execution of 7 search warrants pursuant to section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997⁴⁴ (2018: 0);
- the execution of 2 search warrants pursuant to section 48 of the Criminal Justice (Theft & Fraud Offences) Act 2001 (2018: 0);

⁴⁴ As substituted by section 6 of the Criminal Justice Act 2006

- the arrest of 5 persons (2018: 4), with 4 of those persons (2018: 4) subsequently being detained under section 4 of the Criminal Justice Act 1984 for questioning; and
- meeting 11 (2018: 6) persons by arrangement having volunteered to provide statements after caution.

Permitting/facilitating compliance through the exercise of the Director's statutory functions

During the year, 20 requests (2018: 40) were received from companies seeking a direction disapplying the limitation in section of 288(9) of the Act, under which, ordinarily, a company may not alter its current or previous year end date more than once in a five-year period.

Civil remedies sought

Dissolved insolvent companies

Several thousand companies are struck off the Register in any given year. However, only some of these would actually be insolvent (i.e. unable to discharge their debts as they fall due) at the date of strike off. Many more would typically never have traded or would have discharged all outstanding liabilities prior to being struck off. Against this backdrop, the Office has historically pursued a policy of seeking to identify companies where there is evidence of material unpaid debts having existed at the date of strike off. In the case of such companies, the Office's policy has historically been to consider seeking the disqualification of such companies' directors by way of applications to the High Court.

Other civil litigation

During the year under review, the Office was also involved in miscellaneous civil proceedings, details of which are summarised in the Table below.

Table 18

Details of civil proceedings – 2019

<p><i>Cumann Peile na h-Éireann "Football Association of Ireland"</i></p> <p><i>The High Court – 2019 156 COS</i></p> <p><i>The High Court – 2019 391 COS</i></p>	<p>Following on from demands issued pursuant to section 778 of the Companies Act 2014, the ODCE was obliged to institute proceedings, pursuant to section 795 of the Act, for the purpose of obtaining the Court's determination on certain documents over which an assertion of legal professional privilege had been asserted.</p>
<p><i>Deloitte</i></p> <p><i>The High Court – 2019 282 COS</i></p>	<p>Following on from demands issued to Deloitte LLP pursuant to section 780 of the Companies Act 2014, the ODCE was obliged to institute proceedings, pursuant to section 795 of the Act, for the purpose of obtaining the Court's determination on certain documents over which an assertion of legal professional privilege had been asserted.</p>

<p><i>In the Matter of Independent News and Media plc –</i></p> <p><i>The High Court – 2018 No. 124 COS</i></p> <p><i>The Director of Corporate Enforcement -v- Independent News and Media Plc</i></p>	<p>The Court-appointed Inspectors delivered their First Interim Report to the Court on 10 April 2019.</p> <p>In accordance with the provisions of section 759 of the Act, the Court ordered that a copy of the Interim Report be furnished to the ODCE. Following applications by a number of parties, on 30 July 2019, the Court ordered that copies, subject to certain redactions, be furnished to the various Applicants.</p> <p>The Inspectors indicated in that Interim Report an intention to deliver a final report early in 2020. The updated position is detailed in the Director’s Introduction section herein.</p>
<p><i>Tailored Homes (Navan) Ltd (In Liquidation)</i></p> <p><i>The High Court - 2012 No. 586 COS</i></p> <p><i>The Director of Corporate Enforcement -v- Brendan O’Donoghue</i></p>	<p>The directors of the company had appealed against orders for Restriction made against them by the High Court. The ODCE applied to the High Court, pursuant to section 631 of the Act, for directions regarding the liquidator’s obligations in respect of that appeal. Following the disclosure to the ODCE of previously undisclosed material information by the liquidator, those proceedings were struck out on an agreed basis.</p>
<p><i>Pembroke Dynamic Internet Services Ltd (In Liquidation)</i></p> <p><i>The High Court – 2018 No. 45 COS</i></p> <p><i>Myles Kirby -v- Peter Conlon</i></p>	<p>The ODCE withdrew from the proceedings on 21 October 2019 and, on 14 November 2019, successfully made an application to the District Court pursuant to the Police (Property) Act 1897 for an Order directing the return of material to relevant parties.</p>

Summary criminal proceedings

As has been set out in detail in previous Annual Reports, in recent years the Office has made a conscious policy decision to allocate less resources towards pursuing criminality on the less serious end of the spectrum in favour of concentrating its resources on investigating more serious indications of wrongdoing.

During the year under review, 1 summary prosecution was initiated, details of which are set out below.

<p>An individual was charged with one count of an alleged offence contrary to section 876 of the Companies Act 2014, i.e., the unauthorised use of an Auditor Registration Number on financial statements submitted to the Register of Companies.</p>	<p>On a plea of guilty, the Court directed that, on payment of €2,000 to Ronald McDonald House, the matter would be struck out.</p>
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Indictable criminal proceedings – charges directed and subsequent prosecutions

Consistent with the aforementioned policy, during the year the Office had a significant level of engagement with the Office of the DPP, details of which are set out hereunder:

- the DPP directed an additional 8 charges contrary to section 26 of the Criminal Justice (Theft and Fraud Offences) Act 2001 on foot of an investigation file submitted during 2017. At the date of writing, a trial date is awaited;
- the DPP directed charges on 23 counts of theft, contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. In November 2019, the defendant pleaded guilty to theft and was sentenced to 24 months imprisonment of which the final 19 months were suspended on conditions;
- a file was submitted to the DPP on foot of the ODCE’s investigation into matters relating to the former charity Console; and
- a number of other large-scale investigations were progressed with a view to submitting files to the DPP for consideration as to whether charges should be directed on indictment.

Referrals to professional and other regulatory bodies

Whilst there is an obligation upon the ODCE to keep confidential information that comes into its possession, there is statutory provision⁴⁵ for the disclosure of information to certain third parties (including other regulatory bodies and certain professional bodies) provided that certain prescribed criteria are satisfied.

Pursuant to the foregoing provision, 1 referral (2018: 1) was made to the RABs during the year. Having regard to its statutory remit *vis-à-vis* the RABs, such referrals are always copied to IAASA.

Issues typically referred to RABs include:

- suspected instances of members purporting to conduct audits whilst not authorised by their professional bodies to do so or where otherwise precluded from doing so by virtue of law or professional obligations;
- non-reporting, or delayed reporting, of suspected indictable offences;
- matters relating to the nature of audit opinions provided in respect of companies limited by guarantee;
- failure to respond to queries raised by the Office subsequent to receipt of indictable offence reports.

In addition to the foregoing, the Office makes referrals to other regulatory bodies as considered necessary or otherwise appropriate.

⁴⁵ Section 956 of the Companies Act 2014